

Message Text

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C O N F I D E N T I A L SECTION 1 OF 3 ANKARA 3035

E.O. 11652: GDS

TAGS:PINS, EAID, TU

SUBJECT: FAA SECTION 32-POLITICAL PRISONERS (TURKEY)

PASS AID

REF: STATE 68545

SUMMARY: AS REQUESTED BY REFTEL, THIS MESSAGE EXAMINES POTENTIAL APPLICABILITY OF FAA SECTION 32 TO TURKEY. IT REVIEWS TURKEY'S POLITICAL DEVELOPMENT TREND, LEGAL/JUDICIAL PROCESSES, RESTRICTIONS ON CIVIL AND POLITICAL RIGHTS, ISSUE MADE OF POLITICAL PRISONERS, AND OUTLOOK FOR IMPROVEMENT. WE BELIEVE SECTION 32 NOT VIOLATED BY TURKEY UNDER PRESENT GOVERNMENT; HOWEVER, TURKEY'S RECORD DURING RECENT MARTIAL LAW PERIOD IS NOT BEYOND CONGRESSIONAL CRITICISM. REVIEW BY STATE AND AID LEGAL OFFICES IS RECOMMENDED. END SUMMARY.

1. THE TREND OF TURKEY'S POLITICAL DEVELOPMENT

A. IN THE 50 YEARS SINCE THE SULTANATE WAS ABOLISHED, THE DOMINANT TREND IN TURKEY'S POLITICAL DEVELOPMENT HAS BEEN THE MOVEMENT TOWARD WESTERN-STYLE LIBERAL DEMOCRACY AND THE RULE OF LAW, INCLUDING THE CONSTITUTIONAL PROTECTION OF FUNDAMENTAL POLITICAL AND CIVIL RIGHTS. THIS MOVEMENT HAS HAD SETBACKS, CONFIDENTIAL

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BUT THE OVERALL TREND HAS NONETHELESS CONTINUED.

B. THE MOST RECENT SETBACK WAS THE MILITARY'S OUSTER OF THE DEMIREL GOVERNMENT IN MARCH 1971, FOLLOWED SIX WEEKS LATER BY PARLIAMENT'S IMPOSITION OF MARTIAL LAW IN THE MAJOR PROVINCES (UNDER ARTICLE 124 OF THE TURKISH CONSTITUTION). THESE ACTIONS GREW OUT OF A WAVE OF SERIOUS DOMESTIC DISORDER THAT INCLUDED OPEN CLASHES BETWEEN EXTREMISTS OF LEFT AND RIGHT AND A NUMBER OF TERRORIST INCIDENTS, NOTABLY THE KIDNAPPING-MURDER OF THE ISRAELI CONSUL GENERAL IN ISTANBUL AND THE KIDNAPPING OF FOUR AMERICAN AIRMEN. AS ORDER WAS RESTORED, THE AREA UNDER MARTIAL LAW WAS REDUCED; AND IN SEPTEMBER 1973 MARTIAL LAW WAS COMPLETELY TERMINATED (ALTHOUGH MARTIAL LAW COURTS CONTINUED TO TRY UNFINISHED CASES).

C. FREE ELECTIONS WERE HELD IN OCTOBER 1973. THE COALITION GOVERNMENT HEADED BY BULENT XEVIT, WHO WAS HIMSELF AN OUT-SPOKEN OPPONENT OF THE MARTIAL LAW ADMINISTRATION, IS PLEDGED TO HEAL THE DIVISIONS IN THE COUNTRY AND TO PROMOTE POLITICAL FREEDOM, AS ECEVIT HAS SAID, FOR ALL EXCEPT "THOSE WHO WOULD IMPOSE THEIR IDEAS BY FORCE". A BILL HAS ALREADY BEEN PASSED RESTORING POLITICAL RIGHTS TO ASSOCIATES OF THE LATE PRIMIN MANDERES, WHO WAS OVERTHROWN BY THE MILITARY IN 1960. NOW THE GOVERNMENT'S HIGHEST LEGISLATIVE PRIORITY IS THE PASSAGE OF AN AMNESTY WHICH, AS PASSED BY THE LOWER HOUSE OF PARLIAMENT, WOULD BENEFIT NEARLY ALL PRISONERS BUT WOULD EXCLUDE THOSE CONVICTED OF MAJOR TERRORIST ACTS (THE BILL IS NOW BEFORE THE SENATE). NO PROSECUTIONS OF CASES INVOLVING POLITICAL OFFENSES HAVE BEEN UNDERTAKEN BY THE NEW GOVERNMENT.

2. LEGAL/JUDICIAL PRECESSES

UNDER TURKISH LAW AND JUDICIAL PRACTICE, ARRESTS AND DETENTIONS ARE NOT ARBITRARY IN THE SENSE OF ARTICLE 9 OF THE U.N. DECLARATION OF HUMAN RIGHTS. THE TURKISH CONSTITUTION PROVIDES INTER ALIA FOR: RIGHT TO TRIAL BEFORE AN INDEPENDENT COURT; FREEDOM FROM ILLEGAL SEARCHES AND SEIZURES; FREEDOM OF COMMUNICATION; FREEDOM OF CONSCIENCE, RELIGIOUS FAITH, AND OPINION; FREEDOM OF THOUGHT AND EXPRESSION; FREEDOM OF THE PRESS AND PUBLICATION; RIGHT TO ASSEMBLE AND MARCH IN DEMONSTRATIONS; CONFIDENTIAL

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RIGHT TO FORM ASSOCIATIONS AND POLITICAL PARTIES; AND RIGHT TO VOTE AND HOLD PUBLIC OFFICE. IN ADDITION, THE TURKISH CRIMINAL CODE AND LEGAL PRACTICE PROVIDE FOR A NUMBER OF PROCEDURAL PROTECTIONS FOR THE DEFENDANT, INCLUDING: RIGHT TO BE INFORMED OF CHARGES AGAINST HIM; RIGHT TO BE TRIED ONLY FOR OFFENSES EXPRESSLY FORBIDDEN AT THE TIME OF COMMISSION; RIGHT TO AN ATTORNEY; RIGHT TO EXAMINE WITNESSES; AND RIGHT OF APPEAL. IN LAW, THEREFORE, THE TURKISH SYSTEM INCORPORATES A NUMBER OF

SAFEGUARDS WHICH TAKEN COLLECTIVELY APPROXIMATE WHAT IS KNOWN
IN THE U.S. AS DUE PROCESS, AFFORDING THE INDIVIDUAL A MEASURE
OF PROTECTION FROM ARBITRARY ARREST AND DETENTION, ALTHOUGH
PERHAPS NOT TO THE EXTENT WHICH HAS COME TO BE ACCEPTED IN
WESTERN EUROPE AND THE UNITED STATES.

3. LEGAL RESTRICTIONS ON CIVIL AND POLITICAL RIGHTS

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(6) ARTICLE 146 OF THE CRIMINAL CODE (LAST AMENDED
IN 1961) AND RELATED ARTICLE 147, BOTH OF WHICH ARE DESIGNED TO
DETER MAJOR TERRORIST ACTIVITIES, PROVIDE THE DEATH PENALTY
FOR ANYONE WHO ATTEMPTS TO ALTER BY FORCE THE NATURE OF THE
TURKISH STATE, OR WHO INCITES PEOPLE TO COMMIT SUCH CRIMES.
ACCOMPLICES IN SUCH ACTIVITIES ARE GIVEN LIGHTER SENTENCES.

(7) ARTICLE 149 OF THE CRIMINAL CODE (WHICH DATES
FROM 1926) PROVIDES 20 YEARS IN PRISON FOR ANYONE WHO INCITES
A REVOLT AGAINST THE GOVERNMENT, AND A LESSER PENALTY FOR
ACCOMPLICES.

(8) ARTICLE 163 OF THE CRIMINAL CODE (ALSO FROM 1926)
WAS REPORTEDLY INTENDED TO PREVENT THE EXPLOITATION OF RELIGION
FOR POLITICAL PURPOSES. IT PROHIBITS ANYONE FROM ORGANIZING
OR PARTICIPATING IN SOCIETIES WITH THE PURPOSE OF ADAPTING THE
STATE TO RELIGIOUS PRINCIPLES.

(9) ASSOCIATIONS ACT (LAW #1630) (PROMULGATED
DECEMBER 2, 1972) GREATLY EXPANDS THE GOVERNMENT'S ABILITY

TO SUPERVISE AND CONTROL PRIVATE ORGANIZATIONS, WHILE AT THE SAME TIME RESTRICTING ACTIVITIES AUTHORIZED TO THOSE ORGANIZATIONS. THE LAW IS MOST CLEARLY DIRECTED AT STUDENTS, E.G., IT
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PROHIBITS MORE THAN ONE STUDENT ORGANIZATION AT ANY UNIVERSITY OR SCHOOL, PROSCRIBES THE USE OF POLITICALLY-SENSITIVE NAMES, AND PREVENTS THOSE WHO ARE MEMBERS OF A POLITICAL PARTY FROM MEMBERSHIP AT THE SAME TIME IN A STUDENT ASSOCIATION. ALSO, THE LAW IN EFFECT REQUIRES PRIOR GOVERNMENT APPROVAL FOR THE PUBLICATION OF ASSOCIATION COMMUNIQUEs, DECLARATIONS, ETC.

(10) UNIVERSITY LAW (#1750) (PROMULGATED JUNE 20, 1973), IN CONJUNCTION WITH THE ASSOCIATIONS ACT, SHARPLY RESTRICTS THE AUTONOMY OF THE UNIVERSITIES. IT PROHIBITS STUDENT GROUPS FROM DISTURBING THE PEACE, TRANQUILITY, AND ORDER OF THE UNIVERSITY OF FROM BEHAVING IN A MANNER WHICH IS "INCOMPATIBLE WITH THE HONOR AND DIGNITY OF A UNIVERSITY STUDENT". THE LAW ALSO PROHIBITS FACULTY MEMBERS FROM PARTICIPATING IN DEMONSTRATIONS, DISCUSSIONS, OR PROPAGANDA AGAINST HUMAN RIGHTS AND FREEDOMS OR AGAINST THE TURKISH REPUBLIC. POLICE ARE AUTHORIZED TO ENTER UNIVERSITY CAMPUSES AT ANY TIME WITHOUT AN INVITATION FROM UNIVERSITY AUTHORITIES. THE GOVERNMENT IS ALSO EMPOWERED TO TAKE OVER THE ADMINISTRATION OF THE UNIVERSITIES IN THE FACE OF MAJOR DISRUPTIONS.

(11) PRESS LAW (#5680, AS AMENDED THROUGH NOVEMBER 29, 1960) HOLDS BOTH THE AUTHOR AND PUBLISHER RESPONSIBLE FOR OFFENSES COMMITTED IN THE PRESS, NOTABLY OFFENSES UNDER ARTICLE 142 OF THE CRIMINAL CODE (SPREADING COMMUNIST PROPAGANDA). THE PRESS IS ALSO FORBIDDEN TO PUBLISH DETAILED COVERAGE OF ORDINARY CRIMINAL CASES PRIOR TO ARRAIGNMENT, OR TO PUBLISH CERTAIN INFORMATION (E.G., IDENTITY OF THE VICTIM) IN SENSATIONAL CASES, USUALLY INVOLVING SEXUAL OFFENSES.

B. PERSONS WHO HAVE BEEN CONVICTED OF VIOLATING THE ABOVE LAWS MIGHT BE CONSIDERED POLITICAL PRISONERS, IN THE SENSE THAT THE OFFENSES INVOLVED ARE BROADLY POLITICAL IN NATURE. WHILE MANY HAVE BEEN CONVICTED FOR ACTIVITIES CONSIDERED ILLEGAL IN MOST OTHER COUNTRIES, SOME CONVICTIONS INVOLVE SOLELY THE ACTIVE DISSEMINATION OF PROSCRIBED IDEAS (E.G., COMMUNIST PROPAGANDA), ACTIONS WHICH ARE NO LONGER CONSIDERED ILLEGAL BY MOST OF TURKEY'S NATO PARTNERS.

4. POLITICAL PRISONERS ISSUE
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A. DURING THE MARTIAL LAW PERIOD, TURKEY CAME UNDER STRONG WESTERN EUROPEAN CRITICISM, ESPECIALLY IN THE COUNCIL OF EUROPE, OVER THE ISSUE OF POLITICAL PRISONERS. (ALLEGATIONS OF TORTURE WERE ALSO RAISED BUT HAVE NOT BEEN ADEQUATELY SUBSTANTIATED.) MANY PROMINENT LEFTIST INTELLECTUALS AND JOURNALISTS WERE ARRESTED IN THAT PERIOD, AND THEIR CASES BECAME PUBLICIZED BOTH WITHIN TURKEY AND ABROAD. AMONG THE MOST NOTABLE ARE:

(1) MUMTAZ SOYSAL, FORMER DEAN OF THE POLITICAL SCIENCES FACULTY AT ANKARA UNIVERSITY, WAS ORIGINALLY SENTENCED BY A MARTIAL LAW COURT IN DECEMBER 1971 TO SIX YEARS AND EIGHT MONTHS IN PRISON FOR REFERRING TO AND ALLEGEDLY PRAISING MARX, STALIN, MAO, AND CHE GUEVARA IN A 1969 TEXT ON CONSTITUTIONAL LAW. AFTER FOUR REVERSALS OF PROCEDURAL GROUNDS IN THE MILITARY APPEALS COURT, SOYSAL WAS AGAIN CONVICTED BY A MARTIAL LAW COURT IN ANKARA IN JANUARY 1974. SOYSAL, WHO PREVIOUSLY SPENT ABOUT A YEAR IN JAIL IN CONNECTION WITH THIS CHARGE, IS CURRENTLY FREE PENDING THE OUTCOME OF YET ANOTHER APPEAL. HE HAS RESUMED HIS POST AT THE UNIVERSITY AND SWRITES A COLUMN FOR MILLIYET NEWSPAPER.

(2) UGUR ALACAKAPTAN, FORMER DEAN OF THE LAW FACULTY AT ANKARA UNIVERSITY AND DEFENSE ATTORNEY IN THE SOYSAL CASE, WAS SENTENCED BY A MARTIAL LAW COURT IN DECEMBER 1972 TO SIX YEARS AND THREE MONTHS IMPRISONMENT FOR SE
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5. OUTLOOK FOR IMPROVEMENT

A. THE TREND OF POLITICAL/LEGAL DEVELOPMENT DURING THE LAST 50 YEARS PROBABLY WILL CONTINUE.

B. THE ECEVIT GOVERNMENT CAN BE EXPECTED TO DO ALL IT CAN TO INCREASE POLITICAL FREEDOM. PASSAGE OF THE AMNESTY IS LIKELY. HOWEVER, THE REMOVAL OF ALL LEGAL RESTRICTIONS ON POLITICAL ACTIVITIES HAS NOT YET BEEN PROPOSED, PERHAPS BECAUSE OF THE ARMED FORCES' STRONG BELIEF THAT SUCH RESTRICTIONS ARE NECESSARY FOR INTERNAL SECURITY.

C. PROGRESS IN THIS FIELD IS OF COURSE AT THE MERCY OF OUTBREAKS OF POLITICAL VIOLENCE. IT REMAINS POSSIBLE THAT IN SOME FUTURE CRISIS, THE GOVERNMENT MIGHT FEEL COMPELLED TO CRACK DOWN ON POLITICAL OFFENSES; MARTIAL LAW COULD CONCEIVABLY BE REINSTITUTED.

D. UNDER THE PRESENT PEACEFUL CIRCUMSTANCES, HOWEVER, AND TAKING INTO ACCOUNT THE ECEVIT GOVERNMENT'S COMMITMENT TO STRENGTHENING POLITICAL FREEDOMS, WE SEE NO CURRENT OPPORTUNITIES FOR U.S. ACTION OR REPRESENTATION TO IMPROVE THE SITUATION.

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6. CONCLUSIONS

A. WE BELIEVE THAT TURKEY, DESPITE ITS LEGAL INFRINGEMENTS ON POLITICAL RIGHTS, DOES NOT FIT WITHIN THE CATEGORY OF A "COUNTRY WHICH PRACTICES THE INTERNMENT OR IMPRISONMENT OF THAT COUNTRY'S CITIZENS FOR POLITICAL PURPOSES". OUR REASONS ARE:

(1) TURKEY HAS A LIVELY, ACTIVE, MULTI-PARTY DEMOCRACY. ELECTIONS ARE FREE, AND OPPONENTS OF THE GOVERNMENT CAN EMPLOY A WIDE RANGE OF PEACEFUL TACTICS AGAINST THE PARTY IN POWER.

(2) THE RESTRICTIONS ON POLITICAL ACTIVITIES ARE NOT DESIGNED TO AID THE POLITICAL PURPOSES OF ANY ONE PARTY.

(3) THE LAWS CONTAINING THE RESTRICTIONS ARE MAINTAINED UNDER DEMOCRATIC PROCEDURES.

(4) ARREST IS NOT ARBITRARY, AND THE ACCUSED CAN APPEAL.

(5) TURKEY HAS A 50-YEAR RECORD OF POLITICAL DEVELOPMENT, AND THE CURRENT GOVERNMENT IS ACTING TO CONTINUE THAT TREND.

B. THE DENIAL OF AID TO TURKEY UNDER FAA SECTION 32
WOULD BE INAPPROPRIATE AND PROBABLY WOULD PRODUCE AN EFFECT
CONTRARY TO THAT INTENDED. WE STRONGLY RECOMMEND AGAINST
SUCH A STEP.

C. HOWEVER, TURKEY COULD ATTRACT SOME CONGRESSIONAL
CRITICISM BECAUSE IT DOES HOLD PERSONS IMPRISONED FOR
OFFENSES INVOLVING POLITICAL ACTIVITIES, AND BECAUSE OF THE
EARLIER PUBLICITY GIVEN IMPRISONMENTS AND ALLEGED TORTURE
DURING THE MARTIAL LAW PERIOD. IF SUCH CRITICISM DOES ARISE,
WE RECOMMEND THAT IT BE ANSWERED ALONG THE LINES OF THE
PRECEDING SUB-PARAGRAPH.

D. SINCE THIS SURVEY INVOLVES IMPORTANT LEGAL INTER-
PRETATIONS, WE RECOMMEND THAT IT BE CAREFULLY REVIEWED BY
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